

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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3 ROSIE MARTINEZ, 16-CV-79 (AMD)
4 Plaintiff, United States Courthouse
5 - versus - Brooklyn, New York
6 CITY OF NEW YORK, ET AL., August 1, 2018
7 Defendants. 2:30 p.m.

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10 TRANSCRIPT OF CIVIL CAUSE FOR PROMOTION CONFERENCE
11 BEFORE THE HONORABLE ANN M. DONNELLY
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES

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LINDA D. DANELCZYK, RPR, CSR, CCR
Official Court Reporter

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1 (In open court.)

2 THE COURTROOM DEPUTY: All rise.

3 THE COURT: Hi. Everybody can have a seat.

4 THE COURTROOM DEPUTY: This is civil cause for a
5 premotion conference, Docket Number 16-CV-79, Martinez versus
6 City of New York, et al.

7 Counsel, state your appearance, plaintiff first.

8 MR. HARVIS: Gabriel Harvis for plaintiff, Rosie
9 Martinez. Good afternoon, Your Honor.

10 THE COURT: Hi.

11 MS. FETT: Good afternoon, Your Honor. Baree Fett
12 for plaintiff, Rosie Martinez.

13 And we have our associate here.

14 MR. HARVIS: She started today, Your Honor.

15 THE COURT: Congratulations.

16 This is your first day?

17 MS. INGHIRAMI: Yes.

18 THE COURT: Well, I expect you to handle the entire
19 case. Chime in whenever you want.

20 Go ahead.

21 MR. THADANI: Good afternoon, Your Honor. Kevin
22 Thadani, Office of the Corporation Counsel, on behalf of
23 defendants.

24 THE COURT: All right. Good afternoon, everyone.

25 All right, now I got to tell you, you guys, you're

1 killing me, and I'm not even the one who is supervising
2 discovery in this case.

3 I don't want to see any more letters that say if
4 only so and so had called me before.

5 Work this stuff out, because I can tell you, I don't
6 want to be involved in it, and Judge Pollak doesn't want to be
7 involved in it.

8 So you got to figure out a way to put your
9 differences behind you and move ahead. Because I have to tell
10 you, I guess maybe I picked the wrong job for not liking
11 conflict, but I tend to just tune it out.

12 So it's really -- I'm sure I was very guilty of it
13 in my days as an advocate, but it's annoying, so don't do it
14 any more. It's not helpful.

15 So I take it from the letter this morning, and I
16 know that Judge Pollak is -- that's in her capable hands, but
17 you're going to work out this question of depositions with
18 her; is that right?

19 MR. HARVIS: Yes, Your Honor.

20 THE COURT: All right.

21 So there are -- this is just an anticipated motion
22 to dismiss, not all of the counts but some of the counts in
23 the amended complaint, and let's just go through the ones that
24 the defense is seeking to file a motion to dismiss on.

25 I will say that I think this conspiracy claim is

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1 not -- I don't think that's your strongest argument in this
2 case. I don't see -- I mean, if there's some undefined person
3 in the hospital that conspired?

4 I don't know that that's going to be a winner or
5 not. Maybe on a motion to dismiss, I'm not sure.

6 One thing that I would ask everybody to think about
7 is really what the case is about, which I know that the
8 motion -- I'm sorry, the complaint has additional claims that
9 are based on the discovery problems. I think you should
10 consider to what extent those tend to muddy up what the case
11 is really about.

12 So I think that's a more problematic count of the
13 complaint. Obviously, I have an open mind about it, I'll look
14 at it, but I think that's a weaker case for the plaintiff.

15 The denial of access to the courts. I think that's
16 also not particularly compelling. I think the defense has a
17 pretty strong argument on that.

18 The question about the negligent hiring is less
19 clear to me. I'm not sure that the complaint makes it clear
20 or sufficiently pleads that the City knew or had reason to
21 know about the propensity for violent conduct.

22 I think on the defense side, the deliberate
23 indifference -- the defense argument on the deliberate
24 indifference to me is not particularly persuasive, given what
25 the allegations of the injuries here are. I think that that's

1 a winner for the defense.

2 I think for some of the same reasons I said about
3 the negligence hiring, the *Monell* claim does not seem to be
4 particularly strong either.

5 I don't know why you need a *Monell* claim in a case
6 like this, but people always make them, but I don't -- I don't
7 know why. As I said, I don't think it's the key to the case.

8 So I'll -- bearing in mind how people have gotten
9 along before, this is probably a triumph of hope over
10 experience, but I would wonder whether you would be willing to
11 look at some of your claims and maybe dismiss the ones -- the
12 conspiracy and the *Monell* are the ones that leap to mind --
13 otherwise I mean I can just rule on the whole thing, but it
14 seems to me that you might want to get this show on the road a
15 little bit in terms of getting a case together, and some of
16 this stuff seems like a waste of time to me. It doesn't
17 advance your case and then -- so that's something I would ask
18 you to think about.

19 The question -- I'm not going to stay discovery
20 while the motion is briefed.

21 What was the other thing. There is also a question
22 about which claims are going to be brought against which
23 defendants.

24 Is that something that you're able to -- you can
25 stay seated. I think it's easier to use the microphone.

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1 MR. HARVIS: So just very briefly.

2 First of all, I really appreciate Your Honor's
3 guidance, and we're very open to what Your Honor suggested and
4 we'll take a close look at it. And in the context of doing
5 that, I'm happy to give some clarity.

6 If you closely read defendant's letter, you know,
7 they say that we haven't identified people, but then they
8 basically go on with each claim to say, well, it seems like
9 it's asserted against this person.

10 And so I don't think there's really a conceptual
11 lack of clarity. I think it's just a literal naming of the
12 people. And so that's really sort of an administerial thing
13 and we're happy to do that.

14 I just wanted to say, the overarching reason why you
15 see sort of like a kitchen sink approach was just because of
16 the context in which the actual --

17 THE COURT: I'm familiar.

18 MR. HARVIS: -- amendment had to be filed, and so we
19 sort of just wanted to make sure that to avoid any statute of
20 limitations concerns, we covered all of our basis.

21 The only problem that I have with Your Honor's
22 suggestion is just that we're in exactly, literally exactly
23 the same place that we were on January 22nd, 2018, in terms of
24 the discovery that we've received, having had nothing further.

25 So, you know, because that was our best reading of

1 the record at that time.

2 THE COURT: Are you talking about depositions and
3 things like that?

4 MR. HARVIS: And documents, and just the general
5 discovery.

6 THE COURT: Wait. So are all the documents turned
7 over now?

8 MR. HARVIS: No. We haven't -- I mean, we're still
9 in the middle of everything. And there's depositions, there's
10 open issues.

11 And so I'm not suggesting that -- I mean, in terms
12 of the *Monell* claim and the conspiracy claim, I see the
13 weaknesses there and I certainly want to move the case
14 forward. So I'm inclined to just sort of cut them out and try
15 and reach agreement.

16 But I just wanted to reemphasize that we're really
17 just in a static position. It's a little painful to do that
18 without the benefit that additional -- you know, the sort of
19 comfort that additional information would give us.

20 THE COURT: I'm going to give you a chance to
21 respond, but I also -- I know, and I'm not minimizing it, I
22 know very well what has led us to this point.

23 But I feel like we're on a better track now. I
24 don't think some of the same things are happening, and so I
25 don't think we need to keep revisiting the past.

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1 So I can look forward, and it seems to me that
2 except for the snippy letters back and forth, which I can do
3 without, that things are progressing in a better way.

4 So -- but I'm not asking you to make a decision
5 today, I just want you to think about it.

6 What do you want to say?

7 MR. THADANI: Sure.

8 Just briefly to touch on the discovery point first
9 is, we had, I believe, at least two conferences before the
10 magistrate judge. I think one relatively recently, one a
11 couple months ago.

12 Plaintiff's counsel indicated that the outstanding
13 discovery with respect, just generally to the case was first
14 was depositions, which I do want to address briefly --

15 THE COURT: But --

16 MR. THADANI: -- and then in terms of --

17 THE COURT: The only thing I will say about that is
18 that I think that's in front Judge Pollak, and I'm delighted
19 to have her make those decisions.

20 MR. THADANI: Totally understood, Your Honor. I
21 promise not to touch on that too much, understanding that.

22 With respect to document discovery, plaintiff's
23 counsel indicated that what they were looking for were memo
24 books from the defendants, which there was a deadline set for
25 that, and they were all produced to the extent they hadn't

1 been already, and disciplinary discovery.

2 THE COURT: Right.

3 MR. THADANI: Which our contention was we may be
4 looking at a motion to dismiss here, and whether or not these
5 18 new individuals have now been named as a defendant, if they
6 remain as a defendant, our contention is that none of them
7 should be defendants in the case, and that the proper scope of
8 the case, as Your Honor discussed earlier, was really this
9 case has always been about what happened to the plaintiff; was
10 she assaulted by the defendant officers, as plaintiff alleges,
11 or did she injure herself in the precinct causing her own
12 injuries, as the defendants allege.

13 All these other claims and all these other
14 defendants is something that's now been added. I know
15 plaintiff is contending that they're because of additional
16 documents being produced relatively recently at the end of
17 last year, however, if you really look at the claims, that's
18 not really the case.

19 Claims such as like a deliberate indifference to
20 medical needs, that could have been brought from day one by
21 the plaintiff. The plaintiff knows whether she asked any
22 defendants for medical treatment and whether that was denied.

23 THE COURT: Okay, but that's in the complaint, so --
24 and, you know, I'm not making -- I'm not really making a
25 decision about whether there's enough in the complaint, but

1 it's the complaint. I think there's probably enough.

2 I mean, the injuries are -- based on the case law,
3 the injury that they're claiming she suffered, in my mind that
4 that's sort of the grand mal on this one. I mean it's not
5 like she scrapped her finger or something like that.

6 But the only thing that -- I mean, I have asked the
7 plaintiffs to think about -- you know, I think it's beneficial
8 to everybody to have something that's sort of focused on what
9 the question at hand is. And so I've asked them to do that.

10 But I also, because this has been stalled for kind
11 of a long time, you know, I'm sure, and I don't want to beat
12 this poor dead horse any more, but I don't -- I think it was
13 just a series of mistakes. I don't think anybody was setting
14 out to not find anything out. But that's behind us.

15 But the reason why we're in a position where I'm not
16 inclined, and I'm not going to stay discovery, is because it's
17 taken so long already.

18 So I think this is a case that it would behoove
19 everybody to focus on the people that they have to focus on
20 and move the case forward.

21 Now, I don't even know why I'm asking this question,
22 another time for hope over experience, but have you talked
23 about settling?

24 MR. THADANI: We --

25 THE COURT: You're just too mad at each other.

1 MR. THADANI: No. I think, again, we're always open
2 to discussing settlement.

3 We had talked about it in connection with, as we
4 were ordered to do, to talk about it with respect to the fees
5 and costs motion, which is currently pending before Magistrate
6 Judge Pollak.

7 THE COURT: Not me.

8 MR. THADANI: We did have brief discussions about
9 globally resolving the case as well.

10 To be honest, they didn't go very far, it wasn't a
11 lengthy discussion, at least from our perspective, we're open
12 to continuing those discussions, but to be frank, we haven't
13 really had those discussions while that motion has been
14 pending.

15 Your Honor, if I may just briefly, I understand your
16 ruling and your rationale with respect to the stay of
17 discovery, however -- and not granting that, however, I think
18 one thing that our position is on this is assuming Your Honor
19 allows us to move --

20 THE COURT: I can move. I mean, I don't -- do
21 judges ever tell you you're not allowed to file motions?

22 MR. THADANI: No, no.

23 MR. HARVIS: Sometimes they orally deny it. I've
24 seen that happen, but it's unusual.

25 THE COURT: That's not really the way I rule.

1 So I'm going to let you file it, and I'm cutting you
2 off because I'm hoping that while you're going on discovery
3 you're not going to do discovery on something that is remote.

4 I mean, why don't you just cut to the chase and get
5 to the people that you want to get deposed? Some people
6 probably do have to be -- their depositions have to be
7 reopened.

8 To me this does not seem, and I know I'm sitting at
9 some removed from the battleground, but some of this is not
10 rocket science. I mean, just move the ball forward.

11 So, you know, I try to decide motions pretty
12 quickly, but we're kind of busy, although we are getting new
13 judges, maybe I'll transfer the case.

14 MR. HARVIS: No, thank you, Your Honor.

15 THE COURT: Believe me. That happened to me quite a
16 bit when I was new. But I'm not going to do anything like
17 that.

18 But I do think we just have to be a little more
19 expeditious about this. So this is one you're going to come
20 in second on, and it happens sometimes.

21 So what I'm going to propose is that I'm going to
22 set a briefing schedule, and then what I'm -- you're going to
23 let us know what you're going to clean out of this complaint.

24 And you all are professionals, and I have great
25 faith in you, and I know that you're going to abide by your

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1 promise not to snipe at each other in writing, at least so
2 that I can see it. All right?

3 Okay. So can you get your motion in by
4 September 3rd, and if that, you know, ruins anyone's vacation
5 schedule, let me know that, too. I'm not, you know --

6 MR. THADANI: That should be fine, Your Honor.

7 THE COURT: -- I don't want to wreck your summer.

8 MR. THADANI: That should be okay.

9 THE COURT: All right, September 3rd.

10 And then the opposition will be due October 3rd.

11 And any reply will be October 17th.

12 And there is no harm in seeing if you can work it
13 out in the meantime. All right?

14 MR. HARVIS: Sure.

15 THE COURT: I have confidence in you.

16 And tell me your name again?

17 MS. INGHIRAMI: My name is Chiara Inghirami.

18 THE COURT: I hope I get to see you a lot. Not
19 fighting with people.

20 Congratulations. I think you'll really enjoy it.

21 MS. INGHIRAMI: Thank you.

22 THE COURT: Okay.

23 Anything else?

24 MR. THADANI: No, Your Honor.

25 MR. HARVIS: Not from the plaintiff.

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1 THE COURT: This wasn't so bad.

2 Okay, thank you.

3 MR. HARVIS: Thank you very much, Your Honor.

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5 (Whereupon, the matter was concluded.)

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10 I certify that the foregoing is a correct transcript from the
11 record of proceedings in the above-entitled matter.

12 s/ Linda D. Danelczyk

March 24, 2020

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LINDA D. DANELCZYK

DATE

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